

## MEETING RECORD

**NAME OF GROUP:** PLANNING COMMISSION

**DATE, TIME AND PLACE OF MEETING:** Wednesday, April 18, 2001, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

**MEMBERS IN ATTENDANCE:** Russ Bayer, Jon Carlson, Steve Duvall, Gerry Krieser, Patte Newman, Greg Schwinn, Cecil Steward and Tommy Taylor (Linda Hunter absent); Ray Hill, Jennifer Dam, Ed Zimmer, Jason Reynolds, Becky Horner, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.

**STATED PURPOSE OF MEETING:** Regular Planning Commission Meeting

Chair Russ Bayer called the meeting to order and requested a motion approving the minutes for the meeting held April 4, 2001. Motion to approve made by Newman, seconded by Schwinn and carried 6-0: Carlson, Krieser, Newman, Schwinn, Steward and Taylor voting 'yes'; Bayer and Duvall abstaining; Hunter absent.

**CONSENT AGENDA**  
**PUBLIC HEARING & ADMINISTRATIVE ACTION**  
**BEFORE PLANNING COMMISSION:**

April 18, 2001

Members present: Bayer, Carlson, Duvall, Krieser, Newman, Schwinn, Steward and Taylor; Hunter absent.

The Consent agenda consisted of the following items: **CHANGE OF ZONE NO. 3318; FINAL PLAT NO. 00026, TIMBER RIDGE 3<sup>RD</sup> ADDITION; and STREET AND ALLEY VACATION NO. 01005.**

Schwinn moved to approve the Consent Agenda, seconded by Steward and carried 8-0: Bayer, Carlson, Duvall, Krieser, Newman, Schwinn, Steward and Taylor voting 'yes'; Hunter absent.

**Note:** This is final action on the Timber Ridge 3<sup>rd</sup> Addition Final Plat No. 00026, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

Ray Hill of the Planning Department introduced Becky Horner, a new Planner in the Department.

**CHANGE OF ZONE NO. 3319**  
**FROM AG AGRICULTURAL TO**  
**AGR AGRICULTURAL RESIDENTIAL**  
**and**  
**SPECIAL PERMIT NO. 1386B,**  
**AMENDMENT TO THE WINDHOEK 4<sup>TH</sup>**  
**ADDITION COMMUNITY UNIT PLAN,**  
**ON PROPERTY GENERALLY LOCATED AT**  
**SOUTH 112<sup>TH</sup> & VAN DORN STREETS.**

April 18, 2001

Members present: Krieser, Carlson, Schwinn, Steward, Newman, Taylor, Duvall and Bayer; Hunter absent.

The Planning staff requested a two-week deferral on these applications in order to advertise a revised legal description. Duvall moved to defer, seconded by Newman, with public hearing and administrative action scheduled for May 2, 2001. Motion carried 8-0: Krieser, Carlson, Schwinn, Steward, Newman, Taylor, Duvall and Bayer voting 'yes'; Hunter absent.

No public hearing was held.

**SPECIAL PERMIT NO. 1665A,**  
**AMENDMENT TO THE VAN DORN MEADOWS 1<sup>ST</sup> ADDITION**  
**COMMUNITY UNIT PLAN,**  
**ON PROPERTY GENERALLY LOCATED**  
**AT SOUTH 72<sup>ND</sup> STREET AND VAN DORN STREET.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

April 18, 2001

Members present: Krieser, Carlson, Schwinn, Steward, Newman, Taylor, Duvall and Bayer; Hunter absent.

Planning staff recommendation: Conditional approval.

Becky Horner of Planning staff submitted two letters in opposition and a request to revise the staff recommendation to add Condition #1.1.17, "Revise the site plan to show the trail as currently approved by Special Permit No. 1665."

Proponents

**1. Mark Hunzeker** appeared on behalf of **Chateau Development**. This is a proposal to amend the community unit plan that presently is approved on the property. The pre-existing approval allowed for two very large structures and seven 4-plex structures along the east property line. The revised plan worked out with the neighbors will have six 4-plex structures which will be revised somewhat from what is in front of the Commission.

Hunzeker advised that the developer has had at least three different meetings with the neighbors. They mailed notice to all property owners on both sides of 74<sup>th</sup> Street and the townhouse owners on the north side of Sherman Street. There were no objections to the proposal at that meeting. There were some people unable to attend who did have concerns and they have had two additional meetings with those neighbors whom Hunzeker believes are satisfied.

There was concern expressed relative to the plan before the Commission having to do with the fact that they had shown driveways and parking going back between the four-plex dwellings all the way to the 40' setback along the east property line. In response to an objection from homeowners on the east side, Hunzeker submitted a revised site plan to eliminate the drives going down between the buildings with garages instead along the internal drive with parking in front of the building so that there no longer is the situation where driveways would penetrate between the buildings and shine lights to the east. The buildings have been rearranged and spread out, maintaining the previously approved 40' setback for the buildings and 80' from the property line to any parking areas so that we have a substantial green space between the property line on the east and the interior portion of the buildings. It substantially improves the site plan. This also amends the way the parking is utilized.

Hunzeker acknowledged that this amendment does increase the number of units slightly because the grade drops dramatically going south on the site. It is vastly preferable to have units in the lower level of the buildings that would walk out at grade rather than having retaining walls to make the grades work. This is where the additional units are coming in.

Hunzeker requested a height waiver to go to 40' instead of 35' because they want these units to be fairly upscale with 9' ceilings and pitched rather than flat roofs. 40' is more than they probably have to have and they could probably get by with 38' to allow a good pitch on the roofs so that they fit in.

With regard to Condition #1.1.17 added by the staff today, Hunzeker explained that the site plan shows the bike path stopping sooner, but he believes that it still serves the property adequately and it is where the neighbors prefer to see it stop. They can build it either way, but Hunzeker requested that Condition #1.1.17 not be added. There is more

than adequate incentive for people not necessarily entitled to use that privately owned outlot to use it without permission, and the developer and neighbors would like not to have that bike path penetrate all the way into the outlot but stopped at the first parking lot.

Hunzeker requested to amend Condition #1.1.8 regarding the building height from 35' to at least 38', preferably 40'; and to amend Condition #1.1.16 to "revise the site plan in accordance with the site plan proposed at today's hearing". The existing Condition #1.1.16 requires a fence, but Hunzeker believes there is no need for the fence because they are no longer parking between the buildings with the revised site plan submitted today.

Carlson confirmed that the outlot would be to the south. Hunzeker concurred. Carlson asked Hunzeker to speak further about the undesired trespass issue. Hunzeker noted that there is a row of townhouses on the east side of the outlot and those townhouses, along with Chateau Development, are responsible for maintenance of that outlot and have access and the right to use it. Their concern is that it has a pond on it and is very attractive for people who don't necessarily have a right to use it to come onto the property and trespass and potentially get injured or have problems in the pond. There are a lot of insurance issues as well as privacy issues that the homeowners are concerned about. They would prefer that the bike path stop where proposed. Hunzeker believes there is sufficient access in two other locations.

Steward referred to the bike path and expressed concern about the height of the terrain. He does not think that it is a comfortable nor acceptable distance for elevation change on a bike path. The previous location is in a flatter gradient. Don Day with Olsson Associates stated that they can make the bike path work with the grades where it is shown on the revised site plan. If it went as far as previously approved, it would not be possible with the grade differences. As shown, they can shift the alignment slightly to make it work with the grades. The previous submittal showed a road towards the outlot that was lower, but by abutting buildings up along that line, it is higher.

With regard to the number of units, Hunzeker stated that there are currently 448 units approved. This application adds 17, by changing the building envelopes, increasing the number of structures and changing the facade.

**2. Lowell Berg**, 3121 So. 74<sup>th</sup> Street, appeared on behalf of the **Fox Hollow Homeowners Association** and a coalition of Fox Hollow residents who do not belong to the association, in support of the plan presented today. Their initial concerns were transitional--the area of the four-plexes was a transition between the Fox Hollow single family homes and the apartments. The plan as originally submitted had a hard edge to it. In working with the applicant, the proposed plan is more consistent with what was approved in 1997 with the four-plexes spread out and parking to the west of the buildings. Berg stated that their support for the project will erode if there are significant changes to

this plan by any administrative amendment. This plan includes the spacing between the four-plexes, the minimum of 80' to the parking and the parking on the west of the buildings.

Considering the land topography and this new arrangement of breaking up the major apartment blocks and the recommendation for pitched roofs, Steward asked Mr. Berg whether the neighbors are comfortable with the higher height from a neighborhood perspective. Berg stated that the neighbors would not oppose if done under the way described, which includes the stipulation for sloped roof with eave height of 30' and the height of the units being 37'. Berg believes the equivalent scale on a sloped roof would be acceptable so they are not opposed to the additional height. There is a significant slope difference from this development to the Fox Hollow development.

There was no testimony in opposition.

#### Staff questions

Steward inquired whether the staff is comfortable with the proposed revisions to the conditions requested by the applicant. Horner stated that the staff has reviewed the revised proposal and is comfortable, with the exception of the trail. The staff is also comfortable with the 38' height rather than 40'. She also clarified that Condition #1.1.16 is obsolete now that they have resubmitted as well as Condition #1.1.5, which dealt with the four-plex detail.

With regard to the trail, Horner reminded the Commission that the approved plan is a community unit plan of which an essential function is to have a recreational component. This plan was approved with that trail as a component of the recreational part of the community unit plan. The staff believes that without the extension of the trail it does not equally serve all of the units, and there are no sidewalks to the four-plex units. The purpose of the trail is to get the residents to the outlot for passive recreational purposes.

Carlson confirmed with the applicant that it would take substantial modification to the site plan to accomplish the staff recommendation on the trail. It is Hunzeker's understanding that the proposed grades would make it more difficult to make that work. The applicant's reason for stopping the trail, more than anything, is that the neighbors who use that outlot prefer that it not go that far into the outlot. We think it serves the entire project at its proposed location, the same as the clubhouse and pool will serve the entire project even though they are at the extreme west end of the project.

Steward noted that the trail does penetrate a portion of the outlot as proposed. Hunzeker believes that it penetrates the outlot probably by about 300', so it is a pretty good stretch into that off of 72<sup>nd</sup> Street.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

April 18, 2001

Schwinn moved approval, with conditions, with amendments deleting Condition #1.1.5; amending Condition #1.1.16 to approve the site plan as submitted at the public hearing; deleting Condition #1.1.17 regarding the trail; and amending Condition #1.1.8 to 38', seconded by Steward.

Schwinn noted that the outlot improvements have been in place four or five years, which is a very positive addition to this neighborhood. The owners that have the right to that outlot can walk through there. The bike path comes out of the development and can hook up to the Billy Wolf bike path paid for by the Fox Hollow neighborhood. The recreational facilities in Holmes Park are about two blocks away. In consideration that the developer already owns the corner at South 72nd and Van Dorn and it has always been pleasant, Schwinn does not see that they are going to change what they do. They have done a good job of being very good neighbors.

Carlson noted that the four-plex residents are going to walk through the parking lot to the outlot so he does not believe the bike trail is an issue.

Bayer asked the applicant and staff to remember that the neighbor represented that there will be no administrative amendments.

Motion for conditional approval, with amendments, carried 8-0: Krieser, Carlson, Schwinn, Steward, Newman, Taylor, Duvall and Bayer voting 'yes'; Hunter absent.

**SPECIAL PERMIT NO. 1887 (Revised),**  
**WEST POINT BUSINESS PARK,**  
**ON PROPERTY GENERALLY LOCATED**  
**AT S.W. 40<sup>TH</sup> STREET AND WEST "O" STREET.**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

April 18, 2001

Members present: Krieser, Carlson, Schwinn, Steward, Newman, Taylor, Duvall and Bayer; Hunter absent.

Planning staff recommendation: Deferral for two weeks to advertise additional waiver requests.

Steward moved to defer, with continued public hearing and administrative action scheduled for May 2, 2001, seconded by Schwinn and carried 8-0: Krieser, Carlson, Schwinn, Steward, Newman, Taylor, Duvall and Bayer voting 'yes'; Hunter absent.

**SPECIAL PERMIT NO. 1903**  
**FOR A WIRELESS FACILITY,**  
**ON PROPERTY GENERALLY LOCATED**  
**AT SOUTH 37<sup>TH</sup> STREET AND SHERIDAN BLVD.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

April 18, 2001

Members present: Krieser, Carlson, Schwinn, Steward, Newman, Taylor, Duvall and Bayer; Hunter absent.

Planning staff recommendation: Conditional approval.

Proponents

1. **Jill Bazzell of Qwest Wireless** presented this application to replace an existing parking lot light with a 68' pole with cellular antennae on the top. This site is designed to provide coverage for the area bordered by 33rd Street to the west and 48<sup>th</sup> Street to the east, Normal to the north and Pioneers to the south. There were other sites explored and ruled out. Qwest worked with Southeast High School for over a year; however, that particular location was found to impact the Capitol View Corridor. At the suggestion of the Urban Design Committee, Qwest proposed to move the facility more internal to the school site; however, they were unable to work out another acceptable location or lease agreement. Qwest looked for other sites in the area, i.e. park on 33<sup>rd</sup> & Sheridan; however, Qwest is attempting to avoid locating their facilities in public parks at this time because it appears that the neighbors do not want cell towers in their parks. They also tried Sheridan Lutheran Church but the building is not tall enough.

The next least obtrusive was this application to replace the light pole. It blends with the church and school uses; the residential uses to east are screened by trees; it is out of the line of sight of residents to the northwest; and the church screens the facility to the south.

Qwest mailed letters to property owners within 300'. One call was received by Qwest with interference questions. The Planning staff received a call from another gentlemen opposed but Bazzell did not have his name or address. His main concern was that he thought it was closer to his property than it is actually proposed.

Carlson inquired about the height of the Cathedral of Risen Christ to the west for a possible alternative location. Corby Dill of Qwest indicated that they could not do a camouflage mount on that facility because of the way the top of that church is. It is also a little out of range.

Steward noted that the information on page 75 of the agenda is informative to a point that Qwest cannot locate on the school property because they cannot negotiate a lease, but for all of these eight different attempts, what's the sticking point on the lease with the school? Bazzell responded that there are about seven issues on the lease and the school was not interested in the location proposed by Urban Design Committee. Steward thought this was strange. This is public funds, and public property, and we are trying as a community, as well as Qwest as the provider, to put these towers in the most unobtrusive places as possible for the general public, and it seems like Qwest is getting stonewalled for an otherwise generally acceptable location from a technological and aesthetic perspective. Bazzell's response was that it is the school's property and they feel that where Urban Design had recommended moving it would have more impact on the school property and what they had planned for the school use. Steward suggested this be taken up under other advisement.

Jennifer Dam of Planning staff clarified that Qwest and LPS had originally proposed a site that was in the parking lot on 40<sup>th</sup> that was in direct view of about 10 houses with no screening and in the Capitol View Corridor. The Urban Design recommended that it be located on school property but at a more internal location in an area in the ball field to the east of the school or in the parking lot area close to some of the portables. LPS suggested that it be placed in the front yard along Van Dorn and that proposal was never formally brought back to Urban Design. Staff heard no more at that point in time, and then Qwest came forward with this location.

Carlson wondered why it couldn't go on top of the school. Dill stated that the school is not tall enough. The school roof level is lower than the original proposed location. To move to the area where Urban Design had recommended, Qwest was looking at a 100' or taller pole because of the elevation difference in that area.

### Opposition

**1. Muhammed Dahab**, 3211 Weaver Lane, testified in opposition. He has several concerns to be considered. He is very disappointed that this action is coming forward at this time. He just became aware of it last week, April 6<sup>th</sup>. This is an incredibly unsightly pole behind his house and he just received the letter from the Planning Department on April 10<sup>th</sup>. He is quite puzzled why this is coming forward for a final vote at this point in time. He is disappointed because this tower is an incredible eyesore and destroys the aesthetic quality of the neighborhood and has the potential for lowering property values. He knows Sheridan Lutheran and Qwest are the only two parties that will benefit. The rest



of us suffer reduced visual quality of our neighborhood and possibly reduced property values. For all of us to benefit, this tower must go on public property if it has to go in this neighborhood.

Dahab showed pictures – the screening referred to is actually scrub trees, and the proposed location of the tower is less than 10' from the property line. It is almost in his living room.

Dahab is concerned about interference with radio and public television. He does not have cable. He called an electrical engineering professor at UNL about the radio frequency interference and he was told that the signal is supposed to be on a much higher frequency and should not interfere with radio and television, but yet it is quite possible that interference might occur.

Dahab urged that this is a project that needs to be in the public domain. He does not think Qwest has explored all alternatives with LPS and he believes it can go on top of the school building.

**2. Carolyn Reifler**, a neighbor to Dahab, testified in opposition. She does not want to look at a tower. As far as the trees for screening, they are all leaf trees so there are only leaves on them in the summer and the rest of the time they will have to look at the tower in the parking lot. They finally put reflectors to reflect the parking lot lighting away from their homes. Who is to say they are not putting more communications on that tower? This is a residential neighborhood and we don't want any tower in our neighborhood.

**3. Deb Dahab** testified in opposition. She emphasized the correspondence dated February 8<sup>th</sup> from Qwest to the Planning Dept. It talks about the possibility of future collocation. The proposed height is now 68' but the correspondence says it may be required to be higher in the event of collocation in the future. If that happens the tower would then not be as described but would have to be larger and would look less like a light pole. She is not convinced that it will look like the light poles that are already in the parking lot.

#### Staff questions

Steward asked whether this specific proposal has gone back through the Urban Design Committee. Dam indicated that it has not. Urban Design only reviews proposals on public property. LES and LPS both requested that Urban Design review proposals on their site. Steward presumes that staff has not been present during the negotiations with LPS. Dam concurred. Since LPS is public property and we have a public concern, Steward inquired whether there is a mechanism or opportunity from one public agency to another to engage or intercede in such negotiations. Rick Peo, City Law Department, does not think the city staff has any ability to mandate LPS to come to any particular conclusion or to agree to

any terms. Obviously, the city has the ability to communicate with them and seek their cooperation, but that is just advisory.

Carlson thought there were federal regulations regarding interference. Dam agreed. It is enforced through the Federal Communications Commission (FCC), and she does have a phone number and complaint forms. The city does not enforce this, but by federal law the cellular frequencies are not supposed to interfere with radio and television.

Bayer referred to the picture presented by the neighbors showing a location where “tower” is written on the pavement. Dam clarified that that is not where the tower is going to be located. The pole would have to be located where it is shown on the site plan, which is about 127.2' from the two existing buildings to the east, and almost 68' from the property line.

Bayer commented that a person in the community opposed to towers came to him yesterday and said there was a federal judge in the east who ruled that Planning Commission and government bodies can use aesthetics as reasons to deny an application. Dam believes there have been a couple of cases on that and she will provide the information to the Commission.

#### Response by the Applicant

Bazzell advised with regard to the markings on the pavement. When Qwest goes through site selection, their real estate consultant works with the landlord and they chose the site marked on the ground; however, Qwest then did a site walk and determined that it was too close to the residential properties. The specific location of the pole was then moved more internal to the site. The spray paint has not been removed. This tower will be located in the same place as an existing light pole. She referred to a similar light pole replacement done at Indian Hills Church; however, this one will be 2' shorter.

With regard to decrease in residential property values, Bazzell stated that there has never been any proof that cell towers decrease property values. The tower is proposed at 68' in height.

With regard to the February 8th letter, Bazzell advised that when Qwest submits an application, they are typically required to go taller for future collocation. We are simply stating that the pictures submitted will not be what we would put in – it would be 85' and bigger in diameter to support the weight of another carrier. We wanted to make the fact known. Bayer clarified with Bazzell that this is an application for 68' only – if someone wanted to collocate, could you add 17' to the top of the tower? Bazzell stated that additional height would require another permit. If someone wanted to collocate below the 68', that could be done administratively—above 68' has to come back for another public hearing.

Dam further clarified that the ordinance requires that towers under 100' be constructed to accommodate collocation. At 68' it is unlikely that someone would collocate on it. In other places we have required higher towers and structures, but given the proximity of the residences east of this tower and the way the Indian Hills tower worked so nicely, we left the approval specifically at 68'.

Steward asked whether the original proposal on the school property would have been accepted by the staff. Dam indicated that it would not. The original location proposed was on the parking lot on 40<sup>th</sup> Street on the school property. The staff would have urged a different location to minimize the impacts. It is possible that there is another location on the school property that might be acceptable but that is not before us. LPS felt strongly that more internal sites would affect future use of the school grounds.

With regard to the rents collected from public property locations, Carlson asked whether those rents are targeted to specific areas of the budget. Dam stated that the rent would go to the school. None of that goes to the City.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

April 18, 2001

Duvall moved to approve the Planning staff recommendation of conditional approval, seconded by Schwinn.

Carlson's preference would be to use something on the school property. We want these to blend in. Tower locations on church steeples should be explored. If there is no camouflage opportunity, then the second consideration is distance. We do have distance as an option and that should be explored. The public should shoulder the aesthetic burden and share in the financial gains.

Steward is not convinced that the public schools have allowed a complete and full expiration of other potentials for this location. Until he can be convinced that there has been open and cooperative evaluation of other potential operative sites that would satisfy the vendor, he can't support this because we have spent so much time on criteria for location and on the aesthetics and it's all in the public interest. If we have a public institution in this city that is not engaged in that process, then we need to do something about the engagement. He wonders how many people on the public school grounds use cell phones.

Bayer's concern is that we are punishing the applicant because our school system isn't willing to be responsive. He has a difficult time with that.

Motion for conditional approval carried 5-3: Krieser, Schwinn, Taylor, Duvall and Bayer

voting 'yes'; Carlson, Steward and Newman voting 'no'; Hunter absent.

Note: This is final action unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

**SPECIAL PERMIT NO. 1909**  
**TO PERMIT TEMPORARY STORAGE OF**  
**CONSTRUCTION EQUIPMENT AND MATERIALS**  
**ON PROPERTY GENERALLY LOCATED**  
**AT 5400 SOUTH FOLSOM STREET.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

April 18, 2001

Members present: Krieser, Carlson, Schwinn, Steward, Newman, Taylor, Duvall and Bayer; Hunter absent.

Planning staff recommendation: Conditional approval.

The applicant has requested a two-week deferral.

Proponents

1. **Craig Strong** appeared on behalf of **Leonard Stolzer** to request a two-week deferral.

Duvall moved to defer two weeks, with continued public hearing and administrative action scheduled for May 2, 2001, seconded by Carlson and carried 8-0: Krieser, Carlson, Schwinn, Steward, Newman, Taylor, Duvall and Bayer voting 'yes'; Hunter absent.

Opposition

1. **Laverne Thomas**, 801 W. Calvert, appeared on behalf of the **Yankee Hill Neighborhood**, in opposition. This is no place for it. If you allow one, what about the rest that come along?

2. **Clay Champoux** appeared on behalf of his wife as President of Yankee Hill Neighborhood Association in opposition. This is not appropriate for this area.

**ANNEXATION NO. 00006;**  
**CHANGE OF ZONE NO. 3255;**  
**SPECIAL PERMIT NO. 1839, MORNING GLORY ESTATES**  
**COMMUNITY UNIT PLAN;**  
**PRELIMINARY PLAT NO. 00011, MORNING GLORY ESTATES;**  
**and**  
**USE PERMIT NO. 128,**  
**ON PROPERTY GENERALLY LOCATED**  
**AT NORTH 84<sup>TH</sup> AND HOLDREGE STREETS.**  
**CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:**

April 18, 2001

Members present: Krieser, Carlson, Schwinn, Steward, Newman, Taylor, Duvall and Bayer; Hunter absent.

Jennifer Dam of Planning staff submitted a letter from Scott Anderson, an adjacent property owner to the north, with concerns about street connection to the north and the alignment of the sanitary sewer as it comes through his property.

Proponents

**1. Mark Hunzeker** appeared on behalf of **Holdrege Investors, L.L.C.**, the developer, and submitted proposed amendments to the conditions of approval. They have been working on this development proposal a long time and they were very near complete agreement at one point, but there remain a few big issues and a few minor issues to deal with.

This project is a proposal to rezone the area at the intersection of 84<sup>th</sup> & Holdrege from AG to O-3 along 84<sup>th</sup> Street to the north end of the property; to rezone a portion to R-4 for a multi-family complex in the northeastern portion; and the balance to R-3 for single family and duplex townhomes in the southeastern portion of the site.

With respect to the special permit, Hunzeker requested that Condition #1.2.3 be amended to read as follows: ~~Remove~~ Revise the "play area" designation ~~from on~~ on Lot 10, Block 2, to "potential play area". They wish to simply reflect that it could be used as a potential play area for a day care center as opposed to removing it.

Hunzeker requested that Condition #1.2.4, Change the name of "Lexington Ave." to "Northern Lights Drive" to match the street to the west, be deleted. The name "Lexington Avenue" is the appropriate street name for the street that enters this site from 84<sup>th</sup>. On the west side of 84<sup>th</sup> the entrance to the shopping center has been renamed Northern Lights Drive, but everywhere else on this alignment it is known as Lexington Avenue and we think it is an appropriate designation and it is a very well known street in northeast Lincoln.

Hunzeker requested amendment to Condition #1.2.6 as follows: “Revise the site plan to provide a ~~front and side yard~~ setback of 40' on the north, and a landscape screen on the east side of the multi-family area as required by design standards (Chapter 3.35, section 1.2.)”. This has to do with the multi-family area in the northeast corner. They had a rather lively discussion with staff about what the design standards mean as they relate to setbacks for multi-family buildings in these districts. Hunzeker believes that staff is in agreement with the proposed revised language.

Hunzeker requested that Condition #1.2.7, “Revise the layout of the multi-family area to provide a better transition to the area to the north and east, considering the character of the area to the north and east.”, be deleted. This is an area of disagreement with the staff. The staff is asking us to revise the layout of the multi-family area to provide better transition to the north and east. Hunzeker believes this site plan does provide that good transition. It is a difficult site to lay out. We have worked to revise the layout of the multi-family area in response to suggestions by the staff and concerns by various other city staff. There is a power line that cuts diagonally across this site as well as a detention cell which is required by the city stormwater requirements that really constrain this area in a way that makes it difficult to reconfigure. The developer has re-engineered the detention cell more than once and changed the configuration more than once. Hunzeker believes the proposal does a good job of utilizing the site working around the detention requirements and around the power line. There is no residential use of any kind to the north and the residential uses to the east are quite some distance away. They are acreages that are probably at least 5 acres each and the nearest house is a good 400-500 feet from this development's east property line. This is an area that will be urbanizing in the next few years and there will be a continual growth of urban uses into this area.

Hunzeker request to delete Condition #1.2.8, “Remove the signs from the front yard setback.” The proposal requests six locations for ground signs along 84<sup>th</sup> Street within the front yard setback. The proposal provides a larger than required front yard setback along the west property line, and the applicant is requesting the ability to put ground signs along 84<sup>th</sup> Street in the same manner as has been permitted on the west side of the street. No objections were raised to the ground signs that are in the front yard on the west side of the street. The size of the signs in the O-3 is so limited that they cannot cause much of an obstruction and certainly these businesses are entitled to some identification.

Hunzeker request to amend Condition #1.2.9 as follows: “Revise Note 7 to ~~remove the sentence “with the exception of the east side of N. 86<sup>th</sup> St. along the back side of Lots 11, 12, 21 and 22,~~ add “which will be included with the street project.” He believes this is in conformance with the discussions with Public Works.

Hunzeker requested to amend Condition #1.2.13 as follows: "Add a note indicating that any relocation of LES facilities will be at the owner/developer's expense, except line along north side of Holdrege Street." This has been worked out with Public Works.

Hunzeker requested to amend Condition #1.2.15 as follows: "Show the location of the church's well and septic tank. Add a note indicating that the septic tank will be properly abandoned according to the Health Department regulations at the time of connection to City sewer." This has also been agreed upon with the staff.

As a result of discussions with the neighbor to the north and the church neighbor, Hunzeker requested to amend Condition #1.2.19 as follows: "Revise the site plan, grading and drainage plan and street profiles to show a road connecting to the north, with the appropriate details, and sidewalks on the west side only." A private roadway will be provided extending to the north that will be centered on the east property line of the church property. A waiver of sidewalks has been requested, except on the west side of that street. It runs along the detention cell and they do not want to have sidewalks right up against that detention cell.

Hunzeker requested that Condition #1.2.21 be amended as follows: "Revise the site plan to provide additional ~~entrances/exits to~~ from the multi-family area." This waives a pedestrian access to the east. The neighbors to the east are acreages and it is not likely to be redeveloped into an urban setting in the near future and he believes staff agrees.

Hunzeker requested the same amendments to the conditions of the preliminary plat and to add the following conditions:

2.7 Waiver of the pedestrian connection to the east in Block 4.

2.8 Modification of street design standards, Chapter 2.15, Section 3.4.3, relative to intersection approaches per plans.

and to amend Condition #3.2.3.1: "Half the cost of ~~a 16"~~ an 8" water main in Holdrege Street, adjacent to the plat."

Hunzeker suggested the same amendments to the use permit, adding Condition #2.5: Modifications under 27.27.080(h) and 27.31.100(h) to allow signs within the front yard setback.

Hunzeker advised that they have an agreement for the private roadway; they have worked out the agreement with the church relative to construction of that roadway; and they have agreed to include the church property in the annexation.

Steward asked the applicant to elaborate on comments in the Anderson letter. Hunzeker observed that Anderson is concerned about the scheduling of the construction of the

roadway from Lexington Avenue north to his property line. He has restricted access on 84<sup>th</sup> Street and he will need to have the ability to get to his property from Lexington. Hunzeker agreed that Anderson needs that access and the developer is not opposed to providing it. This developer had previously proposed that the access be provided in a public access easement to be located at the time the use permit was approved on the church property. After discussions with the church, they have arrived at a permanent location for this road along the east property line of their property and this applicant will either construct or guarantee by bonding for that improvement at the time the first final plat is done to final plat the multi-family lot. So it will have to be done within no more than four years from the time the first final plat is approved, and Hunzeker believes their agreement with the church was that it will be done sooner than that.

Don Linscott, 5101 Central Park Drive, testified that the applicant has entered into a tentative agreement with the church, agreeing to have the roadway done by September of 2003.

With regard to the sanitary sewer issue that Anderson brought up, Linscott advised that the developer had originally proposed to put it down the easement where the power lines go. We have now agreed to take a look at putting the sanitary sewer along 86<sup>th</sup> Street over to Leighton and then back down to 84<sup>th</sup>. Linscott has asked the engineers to at least evaluate that to see if it is possible. The developer has had some long discussions with Public Works to allow further depth on the sanitary sewers where intersected with 84<sup>th</sup>, so they will take a look to see if it is possible.

Hunzeker believes it is just a matter of grades. If the grades work, this can be done without too much trouble.

Carlson referred to Condition #1.2.13 regarding the LES improvements. Hunzeker suggested that this is kind of a boiler plate condition that says the developer is responsible for relocating LES facilities, and that's generally the case everywhere. In this case, the developer is providing additional right-of-way and there are improvements being made in Holdrege Street at the request of the City which are not caused by this developer. If we have to move LES lines because of those improvements that are not necessarily this developer's responsibility, they will be done as part of the street project and share costs in the same proportions as the street project.

Linscott further commented that this is a difficult site to work on, especially with the power lines going through the property and with Holdrege Street eventually becoming an arterial street going out to the eventual East Bypass. In working with both Public Works and the Planning Department, Linscott believes there was some really good dialogue in working



through this project and what is going to happen in the future. Even though it has taken a lot longer than he thought it would, he believes there was good cooperation between both departments and the developer in coming up with some solutions that were not easy.

Newman referred to the waiver of the pedestrian connection to the east in Block 4, and asked why the developer does not want to provide that connection. Hunzeker does not believe the pedestrian easement will ever be used, at least not in any meaningful timeframe. It's going into the back yard of an existing acreage lot. Hunzeker would be surprised if the acreage lots were redeveloped into urban sized lots in a timeframe that is meaningful here. Newman noted that this issue came up a couple weeks ago where there was no pedestrian connection and people were cutting through back yards. Hunzeker recalled that that one came up in part because in the previous subdivision they didn't think the area to the east was sewerable. This is a different situation because it is already developed.

There was no testimony in opposition.

#### Staff questions

Jennifer Dam stated that staff disagrees with four of the applicant's proposed amendments.

The staff disagrees with the proposed amendment to Condition #1.2.6 and the deletion of Condition #1.2.7, both of which have to do with design of the multi-family area. The area to the north and to the east is agricultural development now and there are grade differences to the north. Staff believes that there are ways to accommodate the same density with a design that could potentially integrate better in the future as the area is urbanized. The large multi-family buildings on the edge could provide difficulty for transitions in the future.

Staff also disagrees with the deletion of Condition #1.2.8 regarding signs in the front yard setback. The regulations for O-3 and B-2 do not allow signs in the front yard setback. There have been no unusual circumstances provided to the staff for this waiver. If there is an overwhelming feeling in the community that the signs should be located in front yard setbacks, then Dam suggested changing the ordinance rather than consistently granting waivers.

Staff disagrees with the amendment to Condition #1.2.9 relating to the sidewalks. The applicant has requested to waive the sidewalks along the residential lots and staff believes that a continuous sidewalk should be provided for the residential area.

With regard to adding Condition #2.7 to the preliminary plat, Dam stated that the staff

anticipates that the area to the east will urbanize and we should have the foresight to provide that pedestrian connection to the east.

#### Response by the Applicant

Linscott addressed the multi-family area. When they first started looking at this area with the power lines, he was under the assumption that they would be able to change the power lines as was done up in the Landmark area next to the new high school site. Those power lines were moved along the property line. Unfortunately, this is a different type of line to move and it is more expensive. The developer then went to Kansas City and looked at a complex with a power line directly to the north and how they laid it out. With the grade changes and the detention pond, it made it very difficult to lay out the apartment complex. If we could have moved the power lines it would have given us a little more effective room, but we have to work within the constraints of the power line and how the land lays made that difficult.

With regard to the signs in the front yard setback, Linscott noted that across the street on Northwoods they have worked hard to make sure the ground signs match the building design, etc. In this development, there is a major bank that has signed a letter of intent and a fast food. They are going to see those signs in the front yard setback across the street. It makes it difficult trying to sell these parcels when you do not allow the signs. We do have more setback in the O-3 (from 20 to 50 feet) to keep the line along 84<sup>th</sup> consistent. It is on three locations in the B-2 that we have asked for the exception.

With respect to the sidewalk, Hunzeker agreed that the connection to the east is important. The sidewalk along the east side of No. 86<sup>th</sup> is something that can be put in place, but it is something that serves very little in the way of real pedestrian traffic. All of the lots that abut No. 86<sup>th</sup> Street do not front No. 86<sup>th</sup> Street. The frontage is all along 87<sup>th</sup> Street, Lavender Circle, etc. That is where people are likely to be walking. The need for pedestrian access is greater to get to the commercial area on the west side of the street.

Linscott further observed that it is very difficult to design around the detention cell and the power line. We thought we had been through the process of working out a design on it and apparently we were wrong in thinking that. It would be difficult to rearrange the multi-family in any way that doesn't involve re-engineering the site. We want to retain single family and townhomes in the southeast portion as transition from office and commercial space. If we can't do that because we have to re-engineer the entire site, we will probably end up with more multi-family and a less smooth transition than we tried to accomplish.

Carlson noted that the O-3 portion shows 50' front yard setback. It seems logical that it would be reasonable to allow someone to put a sign within the 21-50' area. Is there a sense of where the signs would be in relation to the street? Hunzeker believes it is shown at 10', but he agreed that they would like 21' a lot better than 50'.

Steward understands the difficulty with the location of the power line. Ostensibly it rightly negates this property for single family use, and he wondered whether the units will be required to be two-story. Linscott stated that they will be three-story.

Steward referred to the corner north of the power line. As long as that detention cell stays, then it is that corner that stays there for transition. Is there any possibility for duplex or smaller envelope multi-family units in that corner that give a lower profile as you move toward the other potential single family area? Hunzeker does not believe they are at the same level. They are cutting into the side of that hill with the multi-family site. Steward does not want to get into a design discussion, but the staff's notion is correct that there is a transition concern as long those are three-story units, and there is a significant slope from east to west. Hunzeker suggested that at that location it is higher on the north. This site will be lower than the property to the north as well as the property to the east. He does not believe they will impose a very large overwhelming type structure to anything that could happen on the north side.

Linscott also offered that in working with LES, you have to stay at a certain height under the poles (even the parking lots), so that was another constraint of what could be done grade-wise. In working with Anderson to the north, they have agreed to put additional landscaping in that area to make a better transition to the north.

Public hearing was closed.

**ANNEXATION NO. 00006**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

April 18, 2001

Carlson moved to approve the Planning staff recommendation of conditional approval, seconded by Schwinn and carried 8-0: Krieser, Carlson, Schwinn, Steward, Newman, Taylor and Duvall voting 'yes;' Hunter absent.

**CHANGE OF ZONE NO. 3255**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

April 18, 2001

Duvall moved approval, seconded by Schwinn and carried 8-0: Krieser, Carlson, Schwinn, Steward, Newman, Taylor and Duvall voting 'yes;' Hunter absent.

**SPECIAL PERMIT NO. 1839,**  
**MORNING GLORY ESTATES COMMUNITY UNIT PLAN**  
**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

April 18, 2001

Bayer suggested that amendments made to this community unit plan will also considered as amendments made to the preliminary plat and use permit so that the amendments do not have to be revoted in each application.

Carlson moved to approve the Planning staff recommendation of conditional approval, as revised by staff, seconded by Steward.

Carlson moved to amend to include the proposed amendments by the applicant, except for the amendment to Condition #1.2.9 and the deletion of Condition #1.2.8. Carlson's motion would retain Condition #1.2.9 as written, with additional language at the end, "add which will be included with the street project". Condition #1.2.8 would be retained and amended to allow signs within the front yard setback where there is a 50' front yard setback, providing that no signs shall be located in the first 21'. Motion was seconded by Steward. Carlson wants the sidewalk to stay in and the signs to be allowed. Motion to amend carried 8-0: Krieser, Carlson, Schwinn, Steward, Newman, Taylor and Duvall voting 'yes;' Hunter absent.

Main motion for conditional approval, as revised, with amendments, carried 8-0: Krieser, Carlson, Schwinn, Steward, Newman, Taylor and Duvall voting 'yes;' Hunter absent.

**PRELIMINARY PLAT NO. 00011**  
**MORNING GLORY ESTATES**  
**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

April 18, 2001

Carlson moved to approve the Planning staff recommendation of conditional approval, as revised, with the same amendments approved in the community unit plan, Special Permit No. 1839, seconded by Duvall.

Duvall made a motion amend to add Condition #2.8 and to amend Condition #3.2.3.1, as requested by the applicant, seconded by Schwinn and carried 8-0: Krieser, Carlson, Schwinn, Steward, Newman, Taylor and Duvall voting 'yes;' Hunter absent.

Main motion for conditional approval, as revised, with amendments, carried 8-0: Krieser, Carlson, Schwinn, Steward, Newman, Taylor and Duvall voting 'yes;' Hunter absent.

**USE PERMIT NO. 128**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

April 18, 2001

Duvall moved to approve the Planning staff recommendation of conditional approval, as revised by staff, with the amendments previously approved on the community unit plan and preliminary plat, seconded by Schwinn.

Newman moved to amend to add Condition #2.5 as requested by the applicant, including the language about no ground signs being located within the first 21' where there is a 50' front yard setback, seconded by Duvall and carried 8-0: Krieser, Carlson, Schwinn, Steward, Newman, Taylor and Duvall voting 'yes;' Hunter absent.

Main motion for conditional approval, as revised, with amendments, carried 8-0: Krieser, Carlson, Schwinn, Steward, Newman, Taylor and Duvall voting 'yes;' Hunter absent.

**SPECIAL PERMIT NO. 1165B**

**TO EXPAND A SPECIAL PERMIT FOR**

**HISTORIC PRESERVATION**

**AT 1301 H STREET.**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

April 18, 2001

Members present: Krieser, Carlson, Schwinn, Steward, Newman, Taylor, Duvall and Bayer; Hunter absent.

Steward moved to approve the Planning staff recommendation of conditional, as revised, seconded by Carlson.

Duvall thinks it is ridiculous that we are using this forum to negotiate this dispute.

Steward does not believe we are negotiating a dispute between neighbors. We have a property owner that has made a legitimate request and Steward believes he has every right to make this request. Steward does not see how we can be consistent in our behavior by simply saying this is a personal dispute. Steward stated that he wanted to take sides with the process and the Comprehensive Plan. Whether he feels that it is a dispute or that there are ill feelings created by the request is not something he wants to sit in judgment of. The trees that have come into question in front of the adjacent building he believes are movable and he also believes that if the property owner to the west plants in that strip with the fence as he indicated in his testimony, there will be better shade for cars regardless of where they are parked in that parking lot and the environment will not be damaged in the net consequence.

Taylor agreed with Steward.

Bayer is having a tough time with this because it comes down to property rights. Does the neighbor to the east also have property rights that are involved in this situation, based on some agreement, whether written or verbal? Bayer believes there are two owners involved here, both with some property rights.

Motion for conditional approval, as revised, failed 3-5: Carlson, Steward and Taylor voting 'yes'; Krieser, Schwinn, Newman, Duvall and Bayer voting 'no'; Hunter absent.

Schwinn moved to deny, seconded by Duvall and carried 5-3: Krieser, Schwinn, Newman, Duvall and Bayer voting 'yes'; Carlson, Steward and Taylor voting 'no'; Hunter absent.

There being no further business, the meeting was adjourned at 3:40 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on May 2, 2001.

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